

Serial No. 09/933,562

Atty. Docket No.: 58013.022800

Reply to Non-final Office Action mailed April 21, 2005

### **REMARKS**

Claims 1-41, 43-46, 48-55, 57-59, 61 and 63-76 were pending in the present application. Claims 10, 42, 47, 56, 60, and 62 were previously canceled. Claim 26 has been amended. Therefore, claims 1-9, 11-41, 43-46, 48-55, 57-59, 61 and 63-76 are now pending in the present application.

### **Allowable Subject Matter and Claim Objections**

Applicants thank the Examiner for indicating that claims 1-25, 37-41, 43-46, 48-55, 57-59, 61, and 63-76 are allowed. Applicants also thank the Examiner for indicating that Claims 27-29 and 33 are objected to for depending on a rejected base claim, but that such claims would be patentable if rewritten in independent form.

### **Claim Rejections**

Claims 26, 30, 31, 32, 35-36 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,364,504 to Hon. Claim 34 is rejected under 35 U.S.C. §103(a) as being unpatentable over Hon. Applicants respectfully traverse these rejections for at least the following reasons.

Claim 34 is rejected under 35 U.S.C. §103(a) as being unpatentable over Hon. Applicants respectfully traverse the rejection. Applicants respectfully call the Examiner's attention to the fact that Claim 34 depends from Claim 1, which the Examiner indicated is in condition for allowance. The Court of Appeals for the Federal Circuit has held that where a claim is dependent upon a patentable independent claim, the independent claim is *a fortiori* patentable because it contains all the limitations of the independent claim plus further limitations. See, e.g., Hartness Intern. Inc. v. Simplimatic Engineering Co., 819 F.2d 1100, 1108 (Fed. Cir. 1987). Applicants therefore respectfully request that the Examiner withdraw the rejection of Claim 34.

Claims 26, 27, 30-33, 35 and 36 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hon. In the previous response, Applicants amended Claim 26 "to better

Serial No. 09/933,562

Atty. Docket No.: 58013.022800

Reply to Non-final Office Action mailed April 21, 2005

describe the cut out, hollow, or void portions of the handle, as described in paragraph [0040], and as exemplified by elements 69 of Figure 2. Removal of these elements helps reduce the overall weight of the flashlight without sacrificing the structural integrity of the handle." In the above-referenced Office Action, the Examiner responded to this by stating "Plastic is well known for its lightweight, strength and durability hence satisfying this limitation". The Examiner also cites column 3, lines 14-18 of Hon as teaching that the body portion of the handle includes weight reducing elements, the elements being formed so as to retain the structural strength of the handle. Applicants respectfully traverse the Examiner's rejection. Column 3, lines 14-18, states "The housing and handle are integrally formed and are made from a durable plastic material. The handle of the spotlight protrudes from the bottom rear portion of the housing and is adapted to be held by a person's hand for directing light from the spotlight to a specific location." Applicants respectfully assert that, when read in light of the description provided by Applicants in the previous response, column 3, lines 14-18 of Hon does not teach a handle with weight reducing elements, the elements being formed so as to retain the structural strength of the handle. However, in an effort to expedite allowance of the currently pending claims, Applicants have amended Claim 26 to further define the weight reducing elements as recited above. Applicants' amendment having rendered the Examiner's rejection moot, Applicants respectfully request that the Examiner withdraw the rejection of Claim 26.

Applicants' amendment of claim 26 should not be considered acquiescence to, or agreement with, the Examiner's characterization of the Hon reference and its relationship to Applicants' claimed invention. Applicants respectfully reserve the right to file additional arguments in this regard in the instant application or continuations or divisionals thereof.

Claims 27-33, 35, and 36 depend from independent claim 26. The Court of Appeals for the Federal Circuit has consistently held that where a claim is dependent upon a valid independent claim, the independent claim is *a fortiori* valid because it contains all the limitations of the independent claim plus further limitations. See, e.g., Hartness Intern. Inc. v. Simplimatic Engineering Co., 819 F.2d 1100, 1108 (Fed. Cir. 1987). Applicants assert that claims 27-33, 35,

Serial No. 09/933,562

Atty. Docket No.: 58013.022800

Reply to Non-final Office Action mailed April 21, 2005

and 36 are patentable for at least the reasons recited above with respect to independent claim 26, and respectfully request that the Examiner withdraw the rejection of these claims.

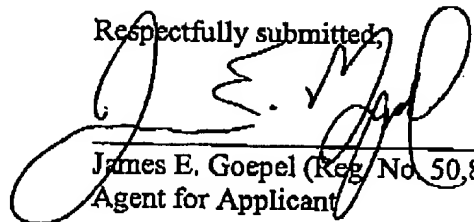
**CONCLUSION**

Applicants respectfully submit that all of the stated grounds of rejection have been properly traversed or rendered moot and believe that all pending claims 1-9, 11-41, 43-46, 48-55, 57-59, 61, and 63-76 are allowable over the prior art of record. Thus, it is believed that the present invention is in condition for allowance, and Notice to that effect is respectfully solicited. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of the application, he is courteously requested to contact Applicants' undersigned representative or Charles Berman at (310) 586-7770.

**AUTHORIZATION**

The Commissioner is authorized to charge any required fees associated with this paper, or credit any overpayment to Deposit Account No. 50-0653.

Respectfully submitted,



James E. Goepel (Reg. No. 50,851)  
Agent for Applicant

GREENBERG TRAURIG, LLP  
2450 Colorado Avenue  
Suite 400 East  
Santa Monica, CA 90404  
(703) 903-7536  
E-mail: goepelj@gtlaw.com

Filed: May 25, 2005